

33

~~REC~~ # 038042



UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Gerald J. O'Grady
1254 Ashover Drive
Bloomfield Hills, MI 48304
Plaintiff,

Case:2:11-cv-15437
Judge: Murphy, Stephen J.
MJ: Whalen, R. Steven
Filed: 12-12-2011 At 01:13 PM
CMP GERALD J O'GRADY VS CENTE
RS FOR MEDICARE, ET AL (TRB)

v.

Centers for Medicare and Medicaid Systems
7500 Security Boulevard
Baltimore, MD 21244
Defendant,

Michigan Department of Community Health
Bureau of Health Systems, Complaint Investigation Unit
611 West Ottawa
Ottawa Building, 4th Floor
P.O. Box 30338
Lansing, MI 48909

Defendant

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, to order the production of agency records, pertaining to an Investigative Report (Report), which was compiled by the Michigan Department of Community Health, Bureau of Health Systems, Complaint Investigation Unit (BHS). The Report is under the control of the federal Centers for Medicare and Medicaid Systems (CMS). Defendant has improperly withheld the documents from plaintiff.

Note that, in summary, the subject Report relates to a BHS investigation into a Complaint about the unexpected death of 94-year-old Jacqueline M. Peters. Ms. Peters died on February 23, 2011, at a nursing home located in Oakland County, Michigan. She was temporarily being treated for physical therapy, absent of terminal illnesses, when she sustained

injuries from a fall. Ms. Peters was declared dead within thirty-minutes of the incident, but only after she was deprived of Cardiopulmonary Resuscitation (CPR), based upon a false and erroneous claim by the nursing home staff, that Ms. Peters had signed a Do-Not-Resuscitate (DNR) Order.

The nursing home recorded her death as "Natural," and omitted the entire incident from its medical file for Ms. Peters, and from Mr. Peters' *Death Certificate*. Note too that BHS compiled its Report under the controlling directive of CMS. The Report was compiled in response to Plaintiff's two-part Complaint dated May 23, 2011, which plaintiff filed with BHS against the nursing home.

2. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff, Gerald J. O'Grady, is one of two surviving sons of the deceased, Jacqueline M. Peters, and is the requester of the records which defendant is now withholding. Plaintiff has requested this information, in part, for use at a Review Hearing, currently scheduled to be conducted before an Administrative Law Judge (ALJ), in Detroit, on Wednesday, December 14th, 2011, and prompt release of the information is essential to plaintiff, for his knowledgeable participation during the Hearing.

Note additionally that plaintiff is named as the Personal Representative for the Estate of Jacqueline M. Peters, by the State of Michigan, Probate Court, County of Oakland, File No. 2011-339,994-DE. A photocopy of plaintiff's "Letters of Authority For Personal Representative" is attached as **Exhibit 1**.

4. Defendant, CMS, is an agency of the United States and has possession of, or in the alternative, it has control over the release of the documents that plaintiff seeks, whereas Defendant, BHS, is an agency of the State of Michigan. BHS has possession of the documents that plaintiff seeks.

5. As noted above, plaintiff filed his complaint with BHS on May 23, 2011. Further, BHS completed its investigation in mid-June, 2011. Nevertheless, and although requested to do so, throughout the months of June, July, August, and into the end of September, BHS did not provide plaintiff with any documentation pertaining to its investigation. A response was received from BHS in a cover-letter dated September 29, 2011, It contained a one-page document, listing its findings, entitled: *ACTS Report Summary*. BHS attributed the brief, one page Summary to procedures mandated by CMS. In this September 29th letter, BHS informed your plaintiff that he had thirty (30) days, from the date of its letter, to file a request for a Review Hearing which would be conducted before an ALJ. Copies of defendant's 09/29/11 letter and Summary Report are attached as **Exhibit 2 - Part 1 & 2**.

Note that by telephone conversation, on October 4, 2011, a BHS manager advised plaintiff that if plaintiff wanted BHS' 30 page Report , plaintiff would be required to file a FOIA Request, per the mandate of CMS.

6. By letter dated October 5, 2011, plaintiff requested a FOIA access to all documents, pertaining to the following BHS investigation: Complaint Intake Number: M100045133, Re: Jacqueline M. Peters, deceased. A copy of this letter is attached as **Exhibit 3**.

Note that BHS had required plaintiff to attach with his FOIA Request, a photocopy of the *Last Will and Testament of Jacqueline M. Peters*, and a photocopy of the *Death Certificate of Jacqueline M. Peters*. Additionally

note that Ms. Peters' *Death Certificate* identified her marital status as **Widowed**. A copy of this *Death Certificate* is attached as **Exhibit 4**.

7. By mail dated October 13, 2011, BHS sent a letter to plaintiff extending its response time to October 27, 2011. A copy of this letter is attached as **Exhibit 5**.

8. By mail dated October 25, 2011, BHS sent an Invoice to plaintiff requiring a prepayment of approximately 50% of its estimated costs, in the amount of \$45.62, for processing its 210 page report. Copies of this letter and Invoice are attached as **Exhibit 6 - Part 1 & 2**.

Note that as of October 25, 2011, BHS did not identify any reasons which, potentially or otherwise, might be cause for BHS or CMS to withhold documents, or delay its obligation to fulfill this FOIA Request.

9 By mail dated October 28, 2011, plaintiff sent a U.S. Postal Money Order in the amount of \$45.62 to BHS. A copy of this letter is attached as **Exhibit 7**.

10. By an e-mail letter dated November 1, 2011, BHS sent a letter informing plaintiff that BHS required a copy of the Probate Court papers appointing the Personal Representative of Ms. Peters' estate. A copy of this e-mail is attached as **Exhibit 8**.

11. By certified U.S. mail, dated November 3, 2011 plaintiff notified BHS that there was no Estate, and further plaintiff sent to BHS an additional copy of Ms. Peters' *Last Will and Testament*, and a copy of Ms. Peters' *Death Certificate*. A copy of this letter is attached as **Exhibit 9 - Page 1 & 2**.

12. By regular U.S. mail, dated November 7, 2011, BHS notified plaintiff that BHS was unable to release any documents pertaining to [plaintiff's] request without a signed copy of the Probate Court papers stating the Personal Representative of the Estate. A copy of this letter is attached as **Exhibit 10 - Page 1 & 2.**

13. On November 14, 2011, your plaintiff opened an estate in the name of Jacqueline M. Peter at the Oakland County Probate Court, for the sole purpose of meeting the requirements of BHS. Cost to plaintiff was in the amount of \$174.00. See **Exhibit 1**, "*Letters of Authority For Personal Representative.*"

14. By certified U.S. mail, dated November 14, 2011, plaintiff sent a letter to BHS, with a copy of his "*Letters of Authority - -*", and further, plaintiff admonished BHS, in its entirety, for manipulating the mail in a manner tantamount to that of mail fraud, in that all of the BHS communications sent by regular U.S. mail in this matter had been dated prior to the dates that appeared on the postmarks on the envelopes carrying its correspondence, the significance being that:

"the dates wrongfully give the impression that I [plaintiff] sat on this matter for a week before responding and that I [plaintiff] was failing in my diligence to resolve this matter."

"I [plaintiff] have time-lines to meet in this matter, and when my time-factors are reduced by the seemingly innocuous actions of delayed postings, I [plaintiff] am deprived of my rights under-the-law."

A copy of this letter is attached as **Exhibit 11 - Page 1 & 2.**

Note here that plaintiff also requested BHS to identify any formal rules or regulations which would mandate that a formal FOIA Request was required by CMS before BHS could release the information. [To date, BHS has not addressed this concern.]

15. By e-mail, on November 16, 2011, BHS notified plaintiff, by letter and Invoice, that BHS would prepare the requested documents, with the requirement that plaintiff first remit the balance of BHS' costs in preparing the material as requested. The Invoice called for the additional payment in the amount of \$162.54 [this was in addition to the initial \$45.62 paid by plaintiff on October 28, 2011.], for a total pre-payment in the amount of \$208.16, for the reproduction of 593 pages. Copies of the two documents are attached as **Exhibit 12 - Part 1 & 2.**

16. By certified U.S. Mail, on November 17, 2011, plaintiff sent a U.S. Postal Money Order to BHS in the amount of \$162.54. Note that BHS received plaintiff's letter and payment on November 18, 2011, per the Track & Confirm printout available on-line from the U.S. Postal Service. Copies of the two documents are attached as **Exhibit 13 - Part 1 & 2.**

17. By mail, dated November 28, 2011, BHS sent a letter to plaintiff focused upon the rationale of its mailing practices. A copy of this letter is attached as **Exhibit 14 - Page 1 & 2.**

Note that BHS admits the discrepancies in the dates indicated on its correspondence, compared to that of the later dates shown on the postmarks carrying BHS' correspondence, but in its admission, BHS rationalized that delayed mailings were the fault of someone else.

Note too that BHS also faulted this plaintiff for all of the BHS processing delays, in that Ms. Peters' *Last Will* - - identified her husband, the late William H. Peters, to be the primary Personal Representative of her estate, and further, that plaintiff had not informed BHS that Ms. Peters' husband, William H. Peters, was deceased. More specifically, BHS stated, in part: "This lack of required information was a key issue regarding the BHS processing of your request."

Note here: Ms. Peters' *Death Certificate* identified her as:

"**Widowed** - per Item 17 on the *Death Certificate*. Accordingly, BHS knew, or should have known, from the very first day of receiving this FOIA Request on October 6, 2011, that Ms. Peters' husband had died before her; hence, he no longer held the capacity to be Ms. Peters' primary Personal Representative. There was **no** lack of required information, for which plaintiff caused BHS its delays in processing this FOIA Request.

Additionally Note in the BHS letter of November 28th it states, in part: "BHS awaits payment before sending . . . the investigation file deemed releasable by the federal CMS. Also, upon receipt of final payment, over 600 documents from the BHS file and your FOIA request will be sent to CMS for review and release or denial under the FOIA."

Note that BHS originally described its file size, on October 4, 2011, as that of 30 pages. Later, on October 28, 2011, BHS notified plaintiff that its file size had increased to an estimated 210 pages, (with a processing cost of \$91.24). The file size was again increased, per BHS in its November 17th Invoice, to an actual size of 593 pages, at a required prepayment cost to plaintiff in the total amount of \$208.16, all of which has been paid, in advance by your plaintiff. And, as of November 28, 2011, BHS has yet again increased the total file size to exceed that of 600 documents.

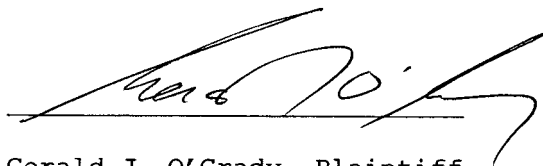
18. To date, plaintiff has complied with each and every demand of BHS and CMS. Plaintiff has scrambled through every hoop, and jumped every hurdle. Plaintiff has a right of access to the requested information under 5 U.S.C. § 552(a)(3), and there is no legal basis for defendant's denial of such access.

A closing note: This entire matter, under Investigation by BHS, pertained to a simple Complaint filed against a nursing home, by a son in behalf of his deceased mother. It should not have required a delayed, a complicated, or a costly process for this son to receive a meaningful answer to his Complaint.

WHEREFORE, plaintiff requests this Court:

- (1) Order defendant to provide access to the requested documents;
- (2) Expedite this proceeding as provided for in 28 U.S.C. § 1657;
- (3) Award plaintiff costs and reasonable attorneys fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief as may deem just and proper.

Respectfully submitted,



Gerald J. O'Grady, Plaintiff
1254 Ashover Drive
Bloomfield Hills, MI 48304-1211

Telephone: 248.852.3931
Email: gjogrady1@yahoo.com

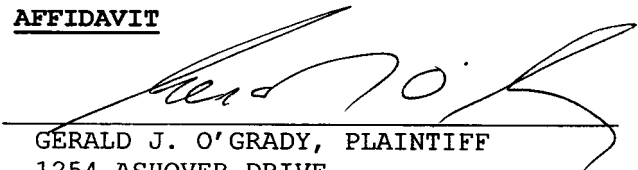
Dated: December 12, 2011

Attached Exhibits: Fourteen (14)

AFFIDAVIT

DATED: December 12th, 2011

BY:


GERALD J. O'GRADY, PLAINTIFF
1254 ASHOVER DRIVE
BLOOMFIELD HILLS, MI 48304-1211

248.852.3931

Today, the above named Gerald J. O'Grady appeared before me, and to the content of this Complaint, which he personally wrote and read in its entirety, he swears it to be true, or to the best of his knowledge it is true.

State of Michigan)
) ss.
County of Oakland)

SWORN TO AND ACKNOWLEDGED before me by Gerald J. O'Grady, this 12/12/2011


NOTARY PUBLIC

TARISSAM. O'MALLEY
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Jan 9, 2016
ACTING IN COUNTY OF *Oakland*

Approved, SCAO

JIS CODE: LET

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF OAKLANDLETTERS OF AUTHORITY FOR
PERSONAL REPRESENTATIVE

FILE NO.

2011-339,994-DE

Estate of JACQUELINE MAE PETERS

Deceased

To:

*Name and address*GERALD J. O'GRADY
1254 ASHOVER DR
BLOOMFIELD HILLS MI 48304*Telephone no.*You have been appointed and qualified as personal representative(s) of the estate on November 14, 2011.

You are authorized to perform all acts authorized by law unless exceptions are specified below.

Date

☐ Your authority is limited in the following way:☐ You have no authority over the estate's real estate or ownership interests in a business entity that you identified on your acceptance of appointment.☐ Other restrictions or limitations are:☒ These letters expire: NO EXPIRATION DATE.

Date

November 14, 2011

Date

Judge (formal proceedings)/Register Jill Koney Daly (informal proceedings)

Bar no.

SEE NOTICE OF DUTIES ON SECOND PAGE

Attorney name (type or print)

Bar no.

Address

City, state, zip

Telephone no.

I certify that I have compared this copy with the original on file and that it is a correct copy of the original, and on this date, these letters are in full force and effect.

Date

11.14.11

Deputy register

Do not write below this line - For court use only

FILED

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Deputy Register of Probate

EXHIBIT 1.



RICK SNYDER
GOVERNOR

State of Michigan
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
Lansing

STEVEN H. HILFINGER
DIRECTOR

September 29, 2011

Gerald O'Grady
1254 Ashover Dr.
Bloomfield Hill, MI 48304

RE: Complaint Intake Number: MI00045133
Facility Name: Sanctuary At Bellbrook

Dear Gerald O'Grady:

The Department has completed its investigation of your complaint filed against Sanctuary At Bellbrook. The findings of the investigation are included in the enclosed report. Findings that are "Substantiated: No deficiencies related to the allegation are cited" mean that after interviewing witnesses and reviewing records, the investigator did not determine that the facility violated a regulation. Since no violations were determined, no action will be taken against the facility. The allegations stated in your complaint will remain a matter of record.


If you are dissatisfied with the determination or investigation you may file a request for a hearing to determine if the complaint should be reinvestigated. A request for a hearing must be submitted within 30 days of the date of this letter. Your letter should contain a specific request such as, "I request a hearing" and be mailed to:

Department of Licensing and Regulatory Affairs
Bureau of Health Systems, Division of Operations
Complaint Investigation Unit
P.O. Box 30664, Lansing, MI 48909

If you request a hearing you will be required to present testimony or documentation to support your position that the investigation was not complete. You may be represented by an attorney. The facility will also have the right to present evidence and may be represented by an attorney. The Department will not have a representative at the hearing. The hearing will be conducted by an Administrative Law Judge assigned by the Department. The Administrative Law Judge may recommend that the matter be closed or recommend that the Director of the Department order a reinvestigation if it is determined that the investigation was not complete. A reinvestigation is the only remedy the Administrative Law Judge may recommend; the Administrative Law Judge cannot issue citations or assess fines or penalties.

Please contact me if you have questions regarding the content of this letter. Thank you for bringing this matter to the attention of the Department.

Sincerely,

for 
John Rojeski, Manager
Complaint Investigation Unit
Division of Operations

Enclosure

Due Date: 09/29/2011
Due Date: 06/14/2011
Priority: Non-IJ High

ACTS Complaint Summary

Intake Number: MI00045133
Facility ID: 634018
Provider Number: 235470
Mgmt.Unit: NHM

PROVIDER INFORMATION:

Name: SANCTUARY AT BELLBROOK
Address: 873 W AVON RD
City/State/Zip/County: ROCHESTER HILLS, MI, 48307, OAKLAND
Telephone: (248)656-3239

License #:
Type: SNF/NF
Medicaid #: 1950516

Complaint Number: MI00045133
State Complaint Number:

Received End Date: 05/31/2011
Investigation Completed: 06/16/2011

ALLEGATIONS

Allegation #: 1

Category: Resident/Patient/Client Rights

Subcategory: Other

Findings: Unsubstantiated:Lack of sufficient evidence

Allegation #: 2

Category: Resident/Patient/Client Rights

Subcategory: Other

Findings: Unsubstantiated:Lack of sufficient evidence

Allegation #: 3

Category: Resident/Patient/Client Neglect

Subcategory: Assess/Monitor

Findings: Unsubstantiated:Lack of sufficient evidence

Allegation #: 4

Category: Quality of Care/Treatment

Subcategory: Resident Safety/Falls

Findings: Substantiated:No deficiencies related to the alleg are cited

Allegation #: 5

Category: Falsification of Records/Reports

Subcategory:

Findings: Unsubstantiated:Lack of sufficient evidence

Total Number of Allegations for Complaint: 5

END OF SUMMARY

GERALD J. O'GRADY
1254 ASHOVER DRIVE
BLOOMFIELD HILLS, MI 48304-1211

248.852.3931
gjogrady1@yahoo.com

October 5, 2011

Debbie Hicks, FOIA Processor
LARA – BHS – FOIA
P.O. BOX 30664
Lansing, Michigan 48909

Subject: Freedom of Information Act Request

Dear Ms. Hicks,

Under provisions of the Michigan Freedom of Information Act (MCLA 15.231 et seq; MSA 4.1801 (1) et seq), or other applicable titles, I am requesting a copy of all documents pertaining to the investigation of:

Complaint Intake Number: MI00045133
Re: Jacqueline M. Peters, deceased

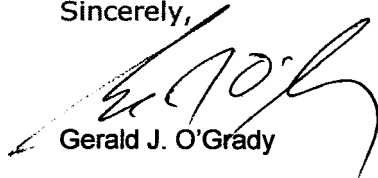
If you determine that some of the requested information is exempt from disclosure, please detail what is being withheld and cite the exemption under FOIA.

If fees to comply with this request exceed \$10, please contact me at 248.852.3931.

As provided under FOIA, I would anticipate my request being filled within five working days of receipt of this letter.

Note that, per your request, I am sending an attached, duplicate photocopy of Mrs. Peters' **Last Will and Testament**, in which *ARTICLE V, paragraph one* names your undersigned as one of two "co-personal representatives." In addition, I am also sending an attached, duplicate photocopy of Mrs. Peters' **Certificate of Death**, which identifies your undersigned as Mrs. Peters' son.

Sincerely,



Gerald J. O'Grady

Attachments: (2) Two – with cover letter addressed to the Oakland County Probate Court

Mailing: One original duplicate letter sent regular U.S. Mail
One original duplicate letter sent, postage prepaid, U.S. Certified Mail

EXHIBIT 3.

CF

DEPARTMENT OF COMMUNITY HEALTH

CERTIFICATE OF DEATH

STATE FILE NUMBER
3310556

1. DECEDENT'S NAME (First, Middle, Last) JACQUELINE MAE PETERS		2. DATE OF BIRTH (Month, Day, Year) March 30, 1916		3. SEX Female		4. DATE OF DEATH (Month, Day, Year) February 23, 2011	
5. NAME AT BIRTH OR OTHER NAME USED FOR PERSONAL BUSINESS (Include AKA's if any) Jacqueline Mae Riekse				6a. AGE - Last Birthday (Years) 94		6b. UNDER 1 YEAR MONTHS: DAYS: HOURS: MINUTES:	
7a. LOCATION OF DEATH (Enter place officially pronounced dead in 7a, 7b, 7c) HOSPITAL OR OTHER INSTITUTION - Name (if not in either, give street and number and zip code) Sanctuary of Bellbrook				7b. CITY, VILLAGE, OR TOWNSHIP OF DEATH Rochester Hills		7c. COUNTY OF DEATH Oakland	
8a. CURRENT RESIDENCE - STATE Michigan		8b. COUNTY Oakland		8c. LOCALITY (check the box that describes the location) <input checked="" type="checkbox"/> CITY OR VILLAGE (inside limits of) <input type="checkbox"/> TOWNSHIP <input type="checkbox"/> UNINCORPORATED PLACE Rochester Hills		8d. STREET AND NUMBER (Include Apt. No. if applicable) 1645 Bedford Square #102	
8e. ZIP CODE 48306		9. BIRTHPLACE (City and State or Country) Detroit, Michigan		10. SOCIAL SECURITY NUMBER 380-14-2271		11. DECEDENT'S EDUCATION - What is the highest degree or level of school completed at the time of death? High School Graduate	
12. RACE - American Indian, White, Black, etc. (If Asian, give nationality, ie. Chinese, Filipino, Asian Indian, etc.) (Enter all that apply) White				13a. ANCESTRY - Mexican, Cuban, Arab, African, English, French, Dutch, etc. (Enter all that apply) If American Indian race, enter principal tribe German-Dutch		13b. HISPANIC ORIGIN (Yes or No) No	
14. WAS DECEDENT EVER IN THE U.S. ARMED FORCES? (yes or no) No							
15. USUAL OCCUPATION Give kind of work done during most of working life. Do not use retired. Secretary		16. KIND OF BUSINESS OR INDUSTRY Automotive Industry		17. MARITAL STATUS - Married, Never Married, Widowed, Divorced (Specify) Widowed		18. NAME OF SURVIVING SPOUSE (If wife, give name before first married)	
19. FATHER'S NAME (First, Middle, Last) Henry John Riekse				20. MOTHER'S NAME BEFORE FIRST MARRIED (First, Middle, Last) Kathryn Freiberg			
21a. INFORMANT'S NAME (Type/Print) Gerald J. O'Grady		21b. RELATIONSHIP TO DECEDENT Son		21c. MAILING ADDRESS (Street and Number or Rural Route Number, City or Village, State, Zip Code) 1254 Ashover Dr., Bloomfield Hills MI 48304			
22. METHOD OF DISPOSITION Burial, Cremation, Entombment, Donation, Removal, Storage (Specify) Cremation		23a. PLACE OF DISPOSITION (Name of Cemetery, Crematory, or other location) CSM Cremation Services				23b. LOCATION - City or Village, State Canton, Michigan	
24. SIGNATURE OF MORTUARY SCIENCE LICENSEE <i>Daniel H. Lee</i>		25. LICENSE NUMBER (of Licensee) 6075		26. NAME AND ADDRESS OF FUNERAL FACILITY R.G. & G.R. Harris Funeral Home 15251 Harper Ave., Detroit, MI 48224			
27a. CERTIFIER (Check only one) <input checked="" type="checkbox"/> Certifying Physician - To the best of my knowledge, death occurred due to the (cause)s and manner stated. <input type="checkbox"/> Medical Examiner - On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated. Signature and Title: <i>Viola A. Grady</i>		28a. ACTUAL OR PRESUMED TIME OF DEATH 2:10 A. M		28b. PRONOUNCED DEAD ON (Mo. Day Yr.) February 23, 2011		28c. TIME PRONOUNCED DEAD 2:10 A. M	
29. MEDICAL EXAMINER CONTACTED? (Yes or No) No		30. PLACE OF DEATH (Home, Hospice, Nursing Home, Hospital, Ambulance) (Specify) Nursing Home		31. IF HOSPITAL, Inpatient, Outpatient, Emergency Room, DOA (Specify)			
27b. DATE SIGNED (Mo. Day, Yr.) February 23/11		27c. LICENSE NUMBER 66417		32. MEDICAL EXAMINER'S CASE NUMBER (if applicable)		33. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)	
34. NAME AND ADDRESS OF CERTIFYING PHYSICIAN (Type or Print) <i>Viola A. Grady 873 W. Avon Rd. Rochester Hills</i>							
35a. REGISTRAR'S SIGNATURE <i>Lisa Sage</i>				35b. DATE FILED (Month, Day, Year) February 24, 2011			
36. PART I. Enter the chain of events - diseases, injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. Enter only one cause on a line. If diabetes was an immediate, underlying or contributing cause of death be sure to record diabetes in either Part I or Part II of the cause of death section, as appropriate. IMMEDIATE CAUSE (Final disease or condition resulting in death) a. <i>Heart Failure</i> DUE TO (OR AS A CONSEQUENCE OF) b. <i>Hypertensive Heart Disease</i> DUE TO (OR AS A CONSEQUENCE OF) c. DUE TO (OR AS A CONSEQUENCE OF) d. Sequentially list conditions, IF ANY, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST PART II. OTHER SIGNIFICANT CONDITIONS contributing to death but not resulting in the underlying cause given in Part I. 37. DID TOBACCO USE CONTRIBUTE TO DEATH? <input type="checkbox"/> Yes <input type="checkbox"/> Probably <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown 38. IF FEMALE: <input checked="" type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Pregnant at time of death <input type="checkbox"/> Not pregnant, but pregnant within 42 days of death <input type="checkbox"/> Not pregnant, but pregnant 43 days to 1 year before death <input type="checkbox"/> Unknown if pregnant within the past year							
39. MANNER OF DEATH - Accident, Suicide, Homicide, Natural, Indeterminate or Pending (Specify) Natural		40a. WAS AN AUTOPSY PERFORMED? (Yes or No) No		40b. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? (Yes or No)			
41a. DATE OF INJURY (Mo., Day, Yr.)		41b. TIME OF INJURY M		41c. DESCRIBE HOW INJURY OCCURRED			
41d. INJURY AT WORK (Yes or No)		41e. PLACE OF INJURY - At home, farm, street, construction site, wooded area, etc. (Specify)		41f. IF TRANSPORTATION INJURY - Driver/Operator, Passenger, Pedestrian, etc. (Specify)		41g. LOCATION - Street or RFD	

EXHIBIT 4.



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH SYSTEMS
MIKE PEMBLE
DIRECTOR

STEVEN H. HILFINGER
DIRECTOR

October 13, 2011

Gerald O'Grady
Gerald J. O'Grady
1254 Ashover Drive
Bloomfield Hills, Michigan 48304-1211

RE: Sanctuary at Bellbrook
BHS FOIA Number: 11-474

Dear Mr. O'Grady:

This notice is issued in response to your October 5, 2011 letter, received on October 6, 2011 requesting information under the Freedom of Information Act, MCL 15.231 et seq. You have requested information that you describe as "I am requesting a copy of all documents pertaining to the investigation of: Complaint Intake Number: MI00045133 Re: Jacqueline M. Peters, deceased."

Consequently, we are extending the date of our response to October 27, 2011 (MCL 15.235(2)(d)) We will attempt to complete this request in as timely a manner as possible.

If this request involves a fee, monies owed will be required to be paid in full prior to shipment of the requested information.

If you have any questions you may contact me at (517) 241-4153.

Sincerely,

A handwritten signature in cursive script that reads "Debbie Hicks".

Debbie Hicks
FOIA Processor

(Extension Letter 09/09/10)



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH SYSTEMS
MIKE PEMBLE
DIRECTOR

STEVEN H. HILFINGER
DIRECTOR

October 25, 2011

Gerald O'Grady
Gerald J. O'Grady
1254 Ashover Drive
Bloomfield Hills, MI 48304-1211

RE: Sanctuary at Bellbrook
BHS FOIA Number: 11-474

Dear Mr. O'Grady:

On October 6, 2011 we received your request for information under the Freedom of Information Act of 1976, No. 442, being sections 15.231 et seq. of the Michigan Compiled Laws. We have reviewed your request and have identified the following as being responsive to your request.

Documents contained in Complaint/Incident Intake file MI00045133.

The identification, search, and duplicating of these documents is an extensive request. We have compiled the materials to be duplicated and it is estimated that the cost will exceed \$50. A deposit of 50% of the amount must be received prior to us preparing the documents. An invoice for this estimated amount is enclosed. Be aware that the estimate on the invoice is low. Please return the invoice along with your payment. **Upon receipt of the deposit, the documents will be prepared. The final fee will be computed and the remainder of the fee is required to be paid prior to shipment of the requested information.** If the actual billing exceeds the estimate by 25% or more, the requestor will be contacted for further instructions.

If you have any questions do not hesitate to contact me at (517) 241-4153.

Sincerely,

A handwritten signature in cursive script that reads "Debbie Hicks".

Debbie Hicks
FOIA Processor

(Estimate Letter 09/09/10)

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH SYSTEMS
OTTAWA BUILDING, 1ST FLOOR, LANSING, MI
**FREEDOM OF INFORMATION ACT AND REQUEST FOR INFORMATION
INVOICE**

Date of Request Letter: October 5, 2011	Date Request Received: October 6, 2011	Date Request Billed: October 25, 2011
Requester's Name & Firm: Gerald O'Grady Gerald J. O'Grady		Requestor's Address: 1254 Ashover Drive Bloomfield Hills, MI 48304-1211
Request Regarding: Sanctuary at Bellbrook BHS FOIA Number: 11-474		
FEE CALCULATION		
1. Charges: (Check one) Actual <input type="checkbox"/> Estimated <input checked="" type="checkbox"/> Preparer: Debbie Hicks		
2. Copying/Reproduction of Materials at \$.25 per page x 210 pages		\$ 52.50
3. Mailing, Shipping, Special Handling Charges (includes special envelopes postage, disks, labels, etc.)		\$ 8.10
4. Special Labor Charges: Search Time 1 hour x \$30.64 per hour		\$ 30.64
5. Publications, Rules, Statutes, and Other Flat Fee Items		
TOTAL AMOUNT DUE		\$ 91.24
<i>50% of this estimated charge is due before work will begin on the request for information. The final actual billing will be due prior to transmitting the documents.</i> ESTIMATED CHARGE DUE NOW		\$ 45.62

MAKE CHECKS PAYABLE TO: The State of Michigan Dept. of Licensing and Regulatory Affairs	
SEND TO:	Revenue Services LARA/BHS/FOIA 7150 Harris Drive, 2 nd Floor Lansing, MI 48909

RETURN THIS INVOICE WITH PAYMENT

Authority: P.A. 442 of 1976

Accounting Credit to: 69100 71861 7612

GERALD J. O'GRADY
1254 ASHOVER DRIVE
BLOOMFIELD HILLS, MI 48304-1211

248.852.3931
gjogrady1@yahoo.com

October 28, 2011

Debbie Hicks, FOIA Processor
LARA – BHS – FOIA
P.O. BOX 30664
Lansing, Michigan 48909

RE: Sanctuary at Bellbrook
BHS FOIA Number: 11-474

Dear Ms. Hicks,

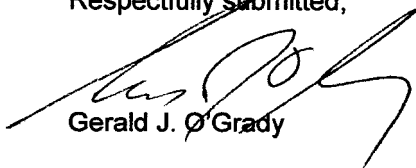
I am in receipt of your correspondence dated October 25, 2011, demanding payment in the amount of Fifty (50%) Percent of the estimated charges for compiling and sending materials pursuant to my FOIA Request dated October 5, 2011.

Accordingly, I have submitted to you, the enclosed U.S. Postal Order, in the exact amount of \$45.62, made Payable to: The State of Michigan, Dept. of Licensing and Regulatory Affairs.

Furthermore, I understand that an additional payment most likely will be due in another amount of approximately \$50.00, which will be due and payable prior to the time that your department will actually send the documents I have requested.

In closing, you will find your INVOICE attached to my PAYMENT, with the Accounting Credit to: 69100 71861 7612.

Respectfully submitted,



Gerald J. O'Grady

Attachments: (2) Two

Mailing: One letter sent, postage prepaid, U.S. Certified Mail

FOIA Request

1 recipients

CC: recipientsYou More

BCC: recipientsYou

Hide Details

FROM:

- Debra Hicks

TO:

- gjogrady1@yahoo.com

Message flagged

Tuesday, November 1, 2011 3:42 PM

Message body

Dear Mr. O'Grady:

Upon further review of your request, we are asking that you please provide a copy of the Probate Court papers appointing the Personal Representative of the Estate.

GERALD J. O'GRADY
1254 ASHOVER DRIVE
BLOOMFIELD HILLS, MI 48304-1211

248.852.3931
gjogrady1@yahoo.com

November 3, 2011

Debbie Hicks, FOIA Processor
LARA – BHS – FOIA
P.O. BOX 30664
Lansing, Michigan 48909

RE: Sanctuary at Bellbrook
BHS FOIA Number: 11-474

Dear Ms. Hicks,

I am in receipt of your e-mail dated Tuesday, November 1st, 2011. The text of your e-mail states in its entirety the following few words:

Dear Mr. O'Grady:

Upon further review of your request, we are asking that you please provide a copy of the Probate Court papers appointing the Personal Representative of the Estate.

Please note, Madam, that on October 5, 2011, I sent my FOIA Request to you, via Certified Mail, #7011 1570 0003 4667 5012. My Request included a very precise cover letter. My Request also contained two attachments, namely:

One was a photocopy of a letter dated April 27, 2011 that had been mailed to the Oakland County Probate Court by the law firm of Giarmarco, Mullins & Horton, P.C., and signed by attorney Julies H. Giarmarco, Esq.

The second attachment was a photocopy of the Last Will and Testament of Jacqueline M. Peters, which also included a photocopy of the Death Certificate of Jacqueline M. Peters.

Mr. Giarmarco's letter expressly instructed the Oakland County Probate Court to ". . . file the Will in accordance with your normal procedures "

Please note, Madam, that beyond the materials sent to the Oakland County Probate Court by Mr. Giarmarco, there would or should be no pertinent papers on file with the Court, for the simple reason that 94-year-old Jacqueline M. Peters had no Estate which the Court might have probated.

Note that my October 5th, 2011 FOIA Request identified me (your undersigned) as Jacqueline Peters' son, and further, the Death Certificate of Jacqueline M. Peters identified me (your undersigned) as Jacqueline Peters' son and, additionally, the Last Will and Testament of Jacqueline M. Peters identified me (your undersigned) as Jacqueline Peters' son.

Debbie Hicks, FOIA Processor
November 3, 2011
Page Two.

Note too that Jacqueline M. Peters' Last Will and Testament not only identified me (your undersigned) as Jacqueline Peters' son, it further names me as her co-personal representative. [See Article V, paragraph one of the **Will**.] – This should satisfy your request, per your e-mail of November 1st, 2011.

To assure that you have all of this information at your finger-tips, I am resending copies of my entire, original FOIA Request, together with all of its attachments.

Madam, I would finally put to you the fact that time is of the essence. I require the documents which I requested.

Respectfully submitted,

Gerald J. O'Grady

Enclosures



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH SYSTEMS
MIKE PEMBLE
DIRECTOR

STEVEN H. HILFINGER
DIRECTOR

November 7, 2011

Gerald O'Grady
1254 Ashover Drive
Bloomfield Hills, MI 48304-1211

RE: Sanctuary at Bellbrook
BHS FOIA Number: 11-474

Dear Mr. O'Grady:

On October 6, 2011 we received your request for information under the Freedom of Information Act of 1976, No. 442, being sections 15.231 et seq. of the Michigan Compiled Laws. We have reviewed your request and determined that the request is denied for the following reason(s):

It has been determined by this agency that the record(s) you have requested is/exempt from disclosure based on MCL 15.243 Section 13(1) (a) & (d). After a thorough review of the Last Will and Testament, it has been determined that we are unable to release any documents pertaining to your request without a signed copy of the Probate Court papers stating the Personal Representative of the Estate.

Enclosed you will find your money order dated 10/28/2011 in the amount of \$45.62.

Section 10 of the FOIA provides that a final decision denying a request may be appealed to the Department Director or judicial review in a circuit court of proper jurisdiction may be sought.

To appeal to the Department Director, submit a written request specifically stating the word "appeal" and citing the reason or reasons why you believe this denial should be reversed to:

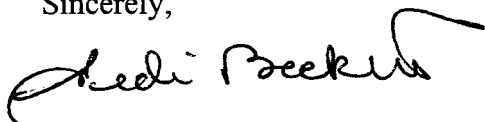
Steven H. Hilfinger, Director
Michigan Department of Licensing & Regulatory Affairs
611 West Ottawa St.
Ottawa Building - 4th Floor
Lansing, Michigan 48933

The Director must respond to your appeal within 10 days of its receipt. This time may be extended under unusual circumstances.

To file an action in circuit court to compel disclosure of records, the action must be filed within 180 days after the date of the denial. If you prevail in such an action the court is to award reasonable attorney fees, costs and disbursements. If the court finds the denial to be arbitrary and capricious, you may receive punitive damages in the amount of \$500.00.

If you have any questions, please do not hesitate to contact me at (517) 241-2650.

Sincerely,

A handwritten signature in black ink, appearing to read "Tedi Beckett", with a stylized flourish at the end.

Tedi Beckett, Manager
Operations Unit
Bureau of Health Systems

(Denial FULL 01/10/11)

GERALD J. O'GRADY
1254 ASHOVER DRIVE
BLOOMFIELD HILLS, MI 48304-1211

248.852.3931
gjogrady1@yahoo.com

November 14, 2011

Tedi Beckett, Manager
Operations Unit
Bureau of Health Systems
P.O. BOX 30664
Lansing, Michigan 48909

RE: Sanctuary at Bellbrook
BHS FOIA Number: 11-474

Dear Ms. Beckett:

I am in receipt of your Monday, November 7th, 2011 correspondence, which was postmarked Wednesday, November 9th, and received by me at my residence on Thursday, November 10th. Note that Friday, November 11th was Veteran's day, a holiday, so today is my first business day to reply to you. I am emphasizing the date and postmark of your correspondence for three reasons:

1. I have received several mailings from your Michigan agency in this matter and, without exception – and – in each instance, the correspondence has been dated prior to the date that appears on the postmark on the envelope carrying the correspondence. It is a fraudulent manipulation of the U.S. Mail.

2. Although I am responding to you on a 24-hour turn-around basis, the dates (November 7th compared to that of November 14th) wrongfully give the impression that I sat on this matter for a week before responding and that I was failing in my diligence to resolve this matter.

3. I have time-lines to meet in this matter, and when my time-factors are reduced by the seemingly innocuous actions of delayed postings, I am deprived of my rights under-the-law.

Ms. Becket, your November 7th letter states in part, “. . . we are unable to release any documents pertaining to your request without a signed copy of the Probate Court papers stating the Personal Representative of the Estate.” In this regard, please note the following:

1. My October 5th, 2011 FOIA Request, was addressed to your FOIA Processor, Ms. Debbie Hicks. My request contained the following statement: *“If you determine that some of the requested information is exempt from disclosure, please detail what is being withheld and cite the exemption under FOIA.”*

My Comment: Ms. Beckett, your FOIA Processor, Ms. Hicks, knew, or she should have known, that I had a 30-day deadline (October 29, 2011) to request a review hearing regarding an investigative report and notification thereof, that I received from John Rojeski, dated September 29, 2011.

Further, your FOIA Processor knew, or she should have known, that your agency would deny release of the subject documents based upon your most recent demand, and yet, she failed to notify me of that information within that first critical and crucial 30 day application time. Your FOIA Processor also allowed my time to run, and she allowed my natural impression to expect that my request would be answered in a timely manner, without unexpected notification at some undetermined future time, that information would be withheld, pending some reason yet to be determined. I was given a thirty-day inclusive window to act; it was a reciprocal window for your agency, in part, due to my time constraints in your agency's notification.

Tedi Beckett, Manager
Operations Unit
Bureau of Health Systems
Page 2

Furthermore, my October correspondence with your FOIA Processor gave every indication that my request would be completed without disclosure concerns, as exemplified by Mr. Hick's letter to me outlining my payment process.

Additionally, your current refusal to disclose occurred **after** demand for payment was presented to me by your agency, and only **after** my payment had been submitted per your agency's request. I have every right to believe that such a quid-pro-quo exchange created a valid obligation on your part to fulfill the agreement pending the three following conditions, namely: (1) to determine final billing, (2) receipt of my final payment, and (3) your mailing!

2. Note that, today, I opened a case-file for my deceased mother, the late Jacqueline Mae Peters, in the Oakland County Probate Court, for the purpose of meeting your requirements.

Enclosed you will find documentation which identifies my *Appointment as Personal Representative* in this matter. Accordingly, your demand is satisfied.

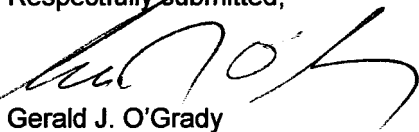
Therefore, I am submitting this documentation to you, and I am resubmitting my payment/U.S. Postal Money Order, dated 10/28/11 in the amount of \$45.62, as my initial file pre-payment, per the requirements of, and pursuant to my combined October 2011 correspondence with Debbie Hicks, FOIA Processor, LARA, BHS, FOIA.

It is my understanding that the total and final cost to me for this file has yet to be calculated, and further, that a final bill will now be submitted to me for my payment, in advance of your action to actually send the file to me.

Please Note: I am currently scheduled for a **12/14/11** review of this file. Please expedite all final requirements to me in this matter.

In closing, and separately if need be to avoid delays of the above, please submit to me any formal rules and regulations which demand that the Answer to the original Complaint that I filed with the Michigan Department of Licensing and Regulatory Affairs, regarding the circumstances of my deceased mother's nursing home care, must be controlled by a FOIA Request. It is my understanding that FOIA Requests are optional to your agency and that they are discretionary and arbitrary to your actions to answer in detail, such being the full investigative report, in matters such as my Complaint, without a FOIA Request.

Respectfully submitted,



Gerald J. O'Grady

cc: Debbie Hicks, FOIA Processor
Steven H. Hilfinger, Director
John Rojeski, Manager

Two (2) Enclosures

Mailing: U.S. Postal Service – Certified Mail – Postage prepaid



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH SYSTEMS
MIKE PEMBLE
DIRECTOR

STEVEN H. HILFINGER
DIRECTOR

November 16, 2011

Gerald O'Grady
1254 Ashover Drive
Bloomfield Hills, MI 48304-1211

RE: Sanctuary at Bellbrook
BHS FOIA Number: 11-474

Dear Mr. O'Grady:

On October 6, 2011 we received your request for information under the Freedom of Information Act of 1976, No. 442, being sections 15.231 et seq. of the Michigan Compiled Laws and on November 15, 2011 we received your Letters of Authority for Personal Representative and your money order in the amount of \$ 45.62 for your estimate payment. We have reviewed your request and to the extent that you have described the records/information, we have identified and prepared materials in response to your request.

Documents contained in Complaint/Incident file MI00045133.

Section 4 of the act provides that the agency may require payment for costs incurred as a result of requests made pursuant to this act. An invoice is attached for you to return with your payment. **Please remit the fee described in the invoice prior to release of the materials.**

If you have any questions, please do not hesitate to contact Tedi Beckett, Bureau FOIA Coordinator, at (517) 241-2650.

Sincerely,

A handwritten signature in cursive script that reads "Debbie Hicks".

Debbie Hicks
FOIA Processor
Bureau of Health Systems

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH SYSTEMS
OTTAWA BUILDING, 1ST FLOOR, LANSING, MI
**FREEDOM OF INFORMATION ACT AND REQUEST FOR INFORMATION
INVOICE**

Date of Request Letter: October 5, 2011	Date Request Received: October 6, 2011	Date Request Billed: November 16, 2011
Requester's Name & Firm: Gerald O'Grady		Requestor's Address: 1254 Ashover Drive Bloomfield Hills, MI 48304-1211
Request Regarding: Sanctuary at Bellbrook BHS FOIA Number: 11-474		
FEE CALCULATION		
1. Charges: (Check one) Actual <u> X </u> Estimated <u> </u> Preparer: Debbie Hicks		
2. Copying/Reproduction of Materials at \$.25 per page x 593 pages		\$ 150.25
3. Mailing, Shipping, Special Handling Charges (includes special envelopes postage, disks, labels, etc.)		\$ 11.95
4. Special Labor Charges: Search and Redacting Time 1.5 hours x \$30.64 per hour		\$ 45.96
5. Publications, Rules, Statutes, and Other Flat Fee Items		
TOTAL AMOUNT DUE		\$ 208.16
ESTIMATE AMOUNT PAID		<u>\$ 45.62</u>
BALANCE DUE NOW		\$ 162.54

MAKE CHECKS PAYABLE TO: The State of Michigan Dept. of Licensing and Regulatory Affairs	
SEND TO:	Revenue Services LARA/BHS/FOIA 7150 Harris Drive, 2 nd Floor Lansing, MI 48909

RETURN THIS INVOICE WITH PAYMENT

Authority: P.A. 442 of 1976

Accounting Credit to: 69100 71861 7612

GERALD J. O'GRADY
1254 ASHOVER DRIVE
BLOOMFIELD HILLS, MI 48304-1211

248.852.3931
gjogrady1@yahoo.com

Revenue Services
LARA/BHS/FOIA
7150 Harris Drive, 2nd Floor
Lansing, MI 48909

RE: Sanctuary at Bellbrook
BHS FOIA NUMBER: 11-474

November 17, 2011

Enclosed, please find Invoice and Payment by U.S. Postal Money Order in the exact amount of \$162.54, as payment in full for applicable file.

Gerald J. O'Grady

Enclosures: Two (2)



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[Track & Confirm](#)

[FAQs](#)

Track & Confirm

Search Results

Label/Receipt Number: 7011 1570 0003 4668 7084

Expected Delivery Date: November 18, 2011

Class: First-Class Mail®

Service(s): Certified Mail™

Status: Delivered

Your item was delivered at 8:37 am on November 18, 2011 in LANSING, MI 48924.

Detailed Results:

- Delivered, November 18, 2011, 8:37 am, LANSING, MI 48924
- Arrival at Unit, November 18, 2011, 7:42 am, LANSING, MI 48924
- Acceptance, November 17, 2011, 3:27 pm, AUBURN HILLS, MI 48326
- Dispatched to Sort Facility, November 16, 2011, 5:24 pm, AUBURN HILLS, MI 48326

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email.

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Track & Confirm

Enter Label/Receipt Number.

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No FEAR Act EEO Data

FOIA



United States Postal Service



United States Postal Service



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
METRO AUTHORITY / FOIA
MELVIN FARNIER, JR.
DIRECTOR

STEVEN H. HILFINGER
DIRECTOR

November 28, 2011

Mr. Gerald J. O'Grady
1254 Ashover Drive
Bloomfield Hills, MI 48304

RE: Sanctuary at Bellbrook, BHS FOIA Number: 11-474

Dear Mr. O'Grady:

This correspondence is in response to your November 14, 2011 letter to Ms. Tedi Beckett in the Department's Bureau of Health Systems (BHS) regarding your Freedom of Information Act (FOIA) request dated October 5, 2011. In this letter you stated concerns regarding untimely responses from BHS, delayed mailings of invoices, the BHS disclosure denial letter, and assumptions that BHS staff should have made about your intentions. Firstly, we are sorry for any delays our responses may have caused you. However, we hope that the following will provide you more insight as to how the Department diligently responds to FOIA requests as required by the state's FOIA statute and federal privacy provisions. The chronology of your request may be summarized as follows:

- October 6, 2011, BHS received your FOIA request for copies of all documents related to a complaint investigation at the Sanctuary of Bellbrook nursing home alleging that the facility did not follow the correct advanced directive for your deceased mother. The surveyor who investigated the complaint found no deficient practice on the part of the facility; and, subsequently wrote a "no basis" report (complaint summary) in great depth and detail. However, the federal Centers for Medicare and Medicaid Services (CMS) changed the software that prints the complaint summary about a year ago such that all complaint summaries now provide complainants with minimal information about how complaint investigations are conducted. We understand that you want to file a hearing request for a reinvestigation of this complaint.

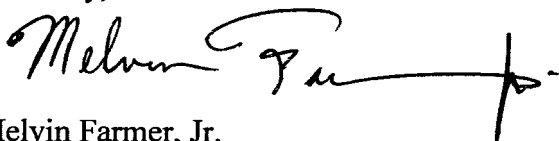
Included with your October 5, 2011 dated FOIA request was your mother's will and the claim that the will appointed you as the personal representative of your mother's estate, entitled to her personal health information. However, the BHS inspection of the submitted will revealed that it specified that your mother's husband was the first personal representative. The submitted will further specified that if your mother's husband was unable to be the personal representative, two sons, yourself and a brother, were jointly named as personal representatives. Further, you did not indicate the status of your mother's husband, and did not provide a release from your brother as co-personal representative. This lack of required information was a key issue regarding the BHS' processing of your request.

Mr. O'Grady
November 28, 2011
Page 2

- October 13, 2011, BHS sent you a letter extending the response time to October 27, 2011.
- October 25, 2011, BHS sent you an invoice for the estimate of \$45.62 to process your FOIA request.
- October 31, 2011 the Department received your payment of \$45.62.
- November 7, 2011, BHS issued its FOIA disclosure denial letter based on MCL 15.243 Section 13(1) (a) & (d) of the FOIA because, as stated above, it did not have a signed copy of Probate Court papers naming you as the personal representative of your mother's estate; and the BHS returned the \$45.62 payment. NOTE: The actual mailing date of the BHS November 7, 2011 letter was controlled by the Michigan Department Technology, Management and Budget (DTMB) which collects and processes the Department's/BHS' mailings via the U.S. Postal Service. It often occurs that a piece of mail from the Department/BHS is not actually mailed the same date as it is placed in a DTMB mail collection bin.
- November 15, 2011, BHS received your certified letter that included the probate court document, dated November 14, 2011, that appointed you as the personal representative of your mother's estate; and the estimated processing cost payment.
- November 16, 2011, BHS emailed you an invoice for a final bill of \$162.54 which, if not already made, BHS awaits payment before sending to you approximately 500 pages of your mother's personal health documents and related facility documents in the BHS investigation file deemed releasable by the federal CMS. Also, upon receipt of final payment, over 600 documents from the BHS file and your FOIA request will be sent to CMS for review and release or denial under the FOIA.

Again, we apologize for any confusion or delays that we may have contributed to regarding your October 5, 2011 FOIA request. However, as you may be aware, the Department must adhere to strict state and federal privacy laws and regulation, regarding the release of confidential information. Thusly, we are very cautious about the release of such information/records without the appropriate release authorizations.

Sincerely,



Melvin Farmer, Jr.
Central FOIA Coordinator

cc: Steven H. Hilfinger
Mike Zimmer
Mike Pemble

JS 44 (Rev. 12/07)

CIVIL COVER SHEET County in which action arose Oakland County

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gerald J. O'Grady
1254 Ashover Drive
Bloomfield Hills, MI 48304-1211 Telephone: 248-852-3931

(b) County of Residence of First Listed Plaintiff Oakland County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

N/A - See Plaintiff Information above

DEFENDANTS

Centers for Medicare and Medicaid + Michigan Dept. of Community Health
7500 Security Boulevard 611 West Ottawa, Ottawa Bldg., 4th Fl
Baltimore, MD 21244 Lansing, MI 48909

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

N

Case: 2:11-cv-15437

Judge: Murphy, Stephen J.

Attorney

MJ: Whalen, R. Steven

Filed: 12-12-2011 At 01:13 PM

CMP GERALD J O'GRADY VS CENTE
RS FOR MEDICARE, ET AL (TRB)**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZEN:

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. § 552

Brief description of cause:

Failure of Defendant to comply with FOIA Request - Complaint for Injunctive Relief

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

December 12, 2011 / SIGNATURE OF PLAINTIFF:

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
